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AN HISTORICAL REVIEW OF THE ARGUMENT IN FAVOR OF THE RIGHT OF THE BRITISH PARLIAMENT TO TAX THE AMERICAN COLONIES.

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CHAPTER I.

ENGLAND ATTEMPTS TO SOLVE HER IMPERIAL PROBLEM.

The year 1760 was an ominous one in the history of the English people. It practically brought to a close a war of a series of wars which made the English supreme in America and India and added enormously to their territory as well as to their commercial greatness. The American colonies now assumed a sudden prominence. The war had revealed them to themselves. They had voted money, raised armies, fought battles, won victories. Men from the different colonies had fought side by side in the common cause, and to some extent a feeling of unity had been engendered. The war had greatly diminished external danger -French, Spanish and Indian - and with this much of the military and political dependence of the colonists on the mother-country. Hitherto the English possessions had consisted of an island kingdom with a few politically-insignificant outposts whose constitutional relations with the mother-country had never been defined. England now found herself at the head of a nation imperial in extent, if not in form. She was brought face to face with the problem of determining her constitutional relations with the colonies. The English constitution was a development, a growth. It was vague, ill-defined. It was nowhere clearly stated in a body of written principles with a recognized umpire to interpret it in cases of dispute. It had been the product of experience and at critical times had been determined

by circumstances. Moreover, it had, in the main, grown up in a feudal island with little reference to any English territory outside of that island. Now the sudden expansion of their possessions, their rapidly developing trade, the necessity of some agreement for common defense, the new feeling of security and self-complacent conceit in the colonies, all made it essential that the English should determine what their constitution really was, or should be, concerning the relation of the different parts of their territory to each other. This very year saw the accession of a new King - George III - a narrow, pedantic, obstinate ruler, whose ideas of imperial authority were not likely to meet with favor from the waxing colonies. The attempts of this King and his ministers to solve the problem by stretching an outgrown insular constitution over the newly extended British possessions led to the revolt of the American colonies.

At the close of the French war England was burdened with an enormous debt, most of which had been contracted in a war fought, according to the British writers, at the earnest solicitation of the colonists and for their protection from imminent danger.[1] Altho the cononists strenuously denied this, yet it must be conceded that the result of the war was greatly beneficial to them. Moreover, later Indian troubles

(1) Grenville, Regulations, Etc., pp. 3,56-57; Knox, Extra-Official Papers II, Appendix p.33; Hutchinson, Mass. Bay III, pp. 103-4.

made it necessary to leave an army of 10,000 men in America for the safety and security of the colonies and other British possessions there. Many public men in England thought it just to require the colonists to help support this army, whose presence was considered beneficial to them. How to secure this support was the problem confronting British statemen.

Hitherto England's interest in the colonies had been mainly commercial. She had regulated their trade according to the principles of the Mercantile System, which regarded them as a source of raw material and a vent for the manufactured product of the mother-country. Their industries had been restrained in certain lines, but encouraged in others. The Navigation Acts had restricted their carrying trade to English vessels, but by defining colonial vessels as English vessels, had given them a share in this monopoly. On the whole, this system probably did little harm to the colonies. The only act which was much complained of was the Molasses Act of 1733, which placed prohibitory duties on foreign sugar and molasses in an attempt to break up the profitable trade between New England and the French and Dutch West India Islands. But this law was not strictly enforced and the duties were generally evaded by an extensive system of smuggling, which probably extended to other articles of import, particularly tea.[1]

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(1). Grenville, Regulations Etc., pp. 56-57, 92-93.

For a generation preceding the French War, English statesmen had paid little attention to America. There had been almost no attempt to define the political status of the colonies. The colonies had prospered thru neglect. But the war and its burdens created an interest in them, and ministers like Charles Townshend and George Grenville began to pride themselves on their knowledge of America. Townshend, while a member of the Bute Ministry, advocated a policy which aimed at the complete dependence of the colonies, even to the extent of remodelling their charters according to a uniform plan. When Grenville became Prime Minister he thought it right that the colonists should pay a just proportion of the expense of maintaining the army in America.[1] Accordingly, he laid his plans for collecting a revenue there. He provided for the strict enforcement of the acts of trade and navigation. The Molasses Act of 1733 expiring by limitation in 1764, Parliament passed the Sugar Act (4 George III, c. 15) making the duty on sugar perpetual at a higher rate, reducing that on molasses from a prohibitory to a revenue duty, and laying import duties on certain other articles. As Burke pointed out this was the first act of Parliament extending to the colonies which contained all the characteristics of a revenue measure: viz., (1) "a title purporting their being grants," (2) a preamble containing the words "give and grant", and (3) the purpose of

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(1) Knox, Extra-Official Papers II, pp. 24-25.

revenue clearly shown in the text of the bill. Hitherto, England "pursued trade and forgot revenue". Now she was attempting to combine the burdens of two inconsistent policies - to join together, in an unnatural union, "the restraint of an universal internal and external monopoly, with a universal internal and external taxation".(1)

At the same session Grenville proposed a stamp tax and gave a year's notice to the colonial agents, "from a real regard and tenderness for the subjects in the colonies", that if "they had any other mode of taxation more convenient to them, and made any proposition which should carry the appearance of equal efficiency with the stamp duty, he would give it all due consideration".(2) Accordingly, early in 1765, no better plan having been suggested,(3) Parliament passed an act imposing stamp duties in the colonies.

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(1) Burke, Speech for the Repeal of the Tea Duty, 1774.

(2) Knox, The Claims of the Colonies, Etc., pp. 32-34; Extra-Official Papers, Appendix, pp. 6-7; Annual Register, 1765, p.33; Burke discredits this statement because Grenville in all his subsequent speeches in Parliament made no reference to it. But it seems clear from Mauduit's report to the Massachusetts Assembly and the reply of the Assembly (both quoted in Lecky III, note p. 320) that Grenville must have discussed the matter with the agents out of doors. Knox says he did. Extra-Official Papers II, pp. 24-25.

(3) Knox, Extra-Official Papers, Appendix pp. 8-9.

These acts stirred up much opposition in America. The colonies were flooded with newspaper articles, pamphlets, printed speeches and resolves of assemblies. They soon had their effect. Within a year, the Stamp Act was repealed. At the same time, as a balm to the wounded pride of Great Britain, Parliament passed the Declaratory Act, which asserted its right to legislate for the colonies "in all cases whatsoever". The repeal produced a lull in the discussion, but it broke out anew then, the next year, Townshend persuaded Parliament to lay revenue duties on tea, glass, and some other articles imported into the colonies, for the support of their civil and military establishment. But, mainly thru the activity of colonial non-importation and non-consumption agreements, the revenue purpose of the acts was defeated; and, in 1770, these duties were repealed, except that on tea, which was left to maintain the principle of the Declaratory Act. Then followed another period of quiet. The Ministry had abandoned the policy of revenue, but insisted on the <u>right</u> to tax, and the colonists were not much alarmed at the assertion of an abstract principle, so long as no attempt was made to enforce it. But a foolish attempt to establish a precedent for this right led to the Boston Tea Party and the consequent Retaliatory Acts of Parliament. The controversy concerning the constitutional relations of the colonies to the mother-country was again taken up and continued, with increasing bitterness, until the thirteen American colonies saved the mother-country

the trouble of solving her imperial problem, as far as they were concerned, by asserting complete independence and successfully defending their position.

CHAPTER II.

THE AMERICAN CONCEPTION OF BRITISH GOVERNMENT.

In a period of intense discussion, when questions hitherto little considered press for immediate solution, it is inevitable that there should be a development of principles from confused and conflicting ideas into a more definite system. Accordingly, during the period from the Peace of Paris to the Declaration of Independence, the American conception of the government of the British possessions progressed from an ill-defined quasi-imperial legislative union to a commercial league based on consent, whose only political tie was a common king; perhaps the adjective federative would describe both conceptions.

At the beginning of the controversy it was conceived that a common constitution extended over the entire British dominions. By this constitution the colonists meant a body of principles and maxims - the system of compacts and conventions, customs, statutes and judicial decisions which had determined the form of the British government. Citizens of Great Britain were considered British subjects within the realm; citizens of the British possessions outside of Great Britain were considered British subjects without the realm. The fundamental principles of this constitution applied equally to all British subjects, within or without the realm, and all these subjects were equally entitled, according to the constitution, to the same liberties and immunities.(1)

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(1) Otis, Rights, Etc. pp. 38, 48, 69.

By 1775 American ideas had advanced to the point where John Adams and some others were ready to deny that the British constitution had any binding force in the colonies and to assert that their laws and governments were based on the law of nature, and compact with the British government and King.

Besides a common constitution the colonists sometimes acknowledged two other political bonds of union with the mother country. (a) They owed allegiance to the same King. (b) They were subject to the control of Parliament.

(a) The American theory was that allegiance was due to the natural person of the King. When this continent was discovered, the English constitution contained no provision for the creation or government of colonies. This was a new problem suddenly thrust upon the Old World by the discovery of the New. In England, the King, as the successor of the Pope, claimed, by the doctrine of apostolic succession, the right to dispose of all heathen lands. It is a proposition universally acknowledged, say the supporters of this view, that any acquisition of foreign territory, however obtained, is, until annexed to the realm, at the absolute disposal of the King, who may grant it to foreign settlers, or even sell it.[1] The colonists went out as subjects of the King;

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(1) Pownall, Administration Etc., pp. 49-50, 59-60; Novanglus pp. 97-98; Hamilton Papers I.,pp. 81, 109, 110; Bancroft, Controversy, Etc., pp. 17-19; 46; S. Adams in Mass. State Papers pp. 351-365.

from him they received their grants of land and charters of government; to him, in return, they conceived that they owed an allegiance similar to that of the feudal oath of fealty.(1) Later, they came to doubt the validity of the King's claim to the lands; but, until the Declaration of Independence, they never wavered in their profession of allegiance to his natural person, altho some of them came to consider it as resulting from a compact stipulating protection on the one hand and obedience on the other. The Petition for Redress of Grievances adopted by the First Continental Congress was addressed to the King, and the list of charges in the Declaration of July 4, 1776, was made against him and not against Parliament or the British government.

(b) The authority of Parliament over the whole British dominion was, in some form or another, generally admitted. The American patriots, the New Whig party in Parliament, and some of the American loyalists held that the power of Parliament was limited by the principles of the British constitution. The American party in England conceded that Parliament had a general right to make laws for the colonies, but Pitt and a few others excepted taxing power from this general legislative power. In America there was some diversity of opinion concerning the extent of

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(1) S. Adams in Mass. State Papers, pp. 384-396; Novanglus, pp.113-114; Hamilton Papers I., p. 110.

Parliamentary power over them and the authority on which it was based. The early statements on this point are sometimes hazy and indefinite. Parliament was commonly referred to by some such title as the "supreme legislative power" and authority was ascribed to it in such matters as "regulation of the commerce of the whole Empire, money and paper credit, and other matters of a general nature,"(1) "general superintending power . . .. over the whole British Empire . . . . . so far as in our circumstances is consistent with the enjoyment of our essential rights as freemen and British subjects,"(2) and "acts for the amendment of the common law".(3) Otis admitted that Parliament had a right to tax the colonies.(4)

An American distinction between the right to lay internal and external taxes, as distinguished from that between duties for revenue and duties for the regulation of trade, seems not to have been in evidence. On the contrary, such a distinction was emphatically denied by the foremost defenders of the American cause during the early period. But popular sentiment soon began to crystallize into a distinction between

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(1) S. Hopkins, Rights of the Colonies Examined, R.I. Col. Records, pp. 416-27.

(2) Letters of Mass. House to Agent De Berdt, Dec. 20, 1765 - S. Adams, Writings I, pp. 61-71.

(3) N. Y. Stamp Act Resolutions.

(4) Otis, Brief Remarks on the Defence of the Halifax Libel, 1765; also Message of Mass. House to Gov. Bernard, Jan. 27, 1761 - Hutchinson III, Appendix, pp. 463-5.

duties for the regulation of trade and duties for revenue. The right of Parliament to lay the former was considered "essential to the relations between a mother-country and her colonies".(1)

Shortly after Parliament asserted its right to legislate for the colonies "in all cases whatsoever," the opinion began to develop in America that Parliament had no right to legislate for them at all. Franklin had suggested the possibility of such a development during his examination before Parliament before the repeal of the Stamp Act.(2) During the first session of the Massachusetts Assembly after the news of the Declaratory Act had reached America, Joseph Hawley boldly denied the right of Parliament to legislate for the colonies - a sentiment which is said to have met the approval of Otis, who, the year before, had stated that Parliament undoubtedly had a right to tax the colonies.(3) Altho the colonies continued to profess "due subordination" to Parliament which they characterized in such vague terms as "the supreme legislative in all cases of necessity for the whole Empire",(4) the doctrine that Parliament had no right to legislate for the colonies without their consent in any case,

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(1) Dickinson, Memoirs, Etc. XIV, p. 184.
(2) Cobbett Parliamentary History XIV. p. 158. Early in 1776 Franklin had privately expressed his sentiments against the right of Parliament to legislate for the colonies. Franklin's Works (Bigelow Edition III. p. 487); see also Franklin Life & Writings (Smyth III. p. 259).
(3) Howard, Preliminaries Etc., pp. 184-5.
(4) Boston Instructions, June 17, 1768, Hutchinson, History of Mass. Bay, III, Appendix p. 490.

steadily gained ground. The Massachusetts House resolved in 1769 that "no laws" could be made to bind them by any body in which they were not represented, and Samuel Adams is quoted as saying, that same year, in the Boston Town Meeting, "Independent we are, and independent we will be".(1) In 1774 James Wilson declared that the colonies were beyond the legislative authority of Parliament,(2) and this doctrine was by this time quite generally accepted. Parliament had no constitutional authority over the colonies, but was permitted, with their consent - express or virtual - to regulate their trade and "such other matters as concern all the colonies together".(3) With the substitution of the idea of a commercial for a political union, a commercial pretext was found for permitting Parliament to regulate their trade; viz., it was based on the protection the British fleet gave that trade.(4) The right of Parliament, with the consent of the colonies, to regulate the trade their fleet protected, continued to be advanced ground in the controversy until 1774, when some of the radical leaders began to advocate absolute independence as a policy. Thus, during the two years preceding the Declaration of Independence, the Whig leaders conceived their relations with Great Britain to be in the nature of a commercial league based on consent; the only political ties which bound

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(1) Hutchinson, History of Mass. Bay, III, pp. 340-345.
(2) Tyler, Literary History, Etc. I, p. 273.
(3) Novanglus pp. 26, 39, 85, 89, 98-99, 101. Hamilton Papers I. p. 134.
(4) S.Adams Writings (Cushing) II. p. 333. Jefferson Writings (Ford) I, pp. 143-5.

them to the mother-country were a common king whose authority over them was derived from compact, and a legislature with limited commercial powers based on consent.

CHAPTER III.

THE COLONISTS DENY THE RIGHT OF PARLIAMENT TO TAX THEM.

Thrucut the whole discussion, the colonists were generally united on one principle. They denied that Parliament had any right whatever to tax them - either internally or externally - for purposes of revenue. They based their claims to exemption on (1) specific charter grants; (2) the fundamental principles of the British constitution; (3) precedent, and (4) the law of nature.

1) The colonists are exempt from Parliamentary taxation by express grants in royal charters and commissions. Some of the early colonial charters, particularly those of Virginia and Massachusetts, made specific exemptions of taxation for a certain period, or indefinitely. At first, the colonists considered these charters as grants[1] rather than compacts, as they later came to be regarded. During the early period, this argument was much in evidence in the colonies where such charters existed.[2] As early as July, 1764, the fatal weakness of this argument - that if the charters were grants they could be annihilated by act of Parliament - was pointed out by Otis.[3] Gadsden showed the danger arising from the divergence in charters in the different colonies;[4] and the Stamp Act

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(1) Otis speech at Boston Town Meeting after Peace of Paris, 1763, Hutchinson History of Mass. Bay III, pp. 101-2.
(2) Mass. State Papers, Introduction pp. 9-11; also pp. 24,351-65. Otis Rights Etc., Appendix, pp. 103-4. Fitch, Reasons Why, Etc. Conn Col. Rec. XII, pp. 653-71.
(3) Otis, Rights Etc., pp. 49,51.
(4) Gibbes, Documentary History I, pp. 6-8.

Congress, after a warm debate, finally decided not to base their claims on the charter exemptions.

2. The colonies claimed they were exempt from Parliamentary taxation by the fundamental principles of the British constitution. The principle on which this exemption was claimed was that no man can be taxed by a body in which he is not represented. This principle was based on the doctrine that it is an absolute right of British subjects that their private property cannot be taken without their consent.(1)

That taxation and representation are inseparable was held to be a sacred constitutional principle. It was founded on usage and common law, sanctioned by Magna Charta, the Bill of Rights, and other English charters and compacts. It was also founded on the law of nature; "it is itself an eternal law of nature", says Lord Camden, "for whatever is a man's own, is absolutely his own; no man hath a right to take it from him without his consent, either expressed by himself or his representative . . . . . I challenge any one to point out the time when any tax was laid upon any person by Parliament, that person being unrepresented in Parliament;" and in proof of his contention that this has been the usuage in England he cites the cases of Chester, the Clergy, Calais and Berwick, Jersey, Guernsey and Man.(2)

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(1) Otis, Rights, Etc. Appendix, pp. 108-113.
(2) Cobbett, Parliamentary History XVI. pp. 169, 177-80. Also Otis, Rights, Etc. pp. 68, 93. Petition to Commons by Stamp Act Congress. Novanglus p. 118.

According to the views of the colonists they were not represented in the British Parliament, consequently they could not constitutionally be taxed by it. Some of the Americans, desiring closer union with the mother-country and among themselves, proposed representation in Parliament as a remedy; but the mass of the Americans repudiated the idea as impossible and undesirable. They were represented in their colonial assemblies, they said, and these alone had the right to tax them.

To this the British replied that the Americans were already virtually represented in Parliament, because they were British subjects, that every member of Parliament represented every subject in the Empire, that the colonists were as fully represented as Manchester, Birmingham and other English cities which sent no distinct representatives, and that they were in the same position as English corporations.

The Americans answered the virtual representation theory by advocating a system of their own - proportional, territorial representation. According to this system each district or locality elects one of its number to the legislature, and this member distinctly represents the people who elect him. While the proportional idea was not worked out to its modern perfection, the germ was certainly present. They denied that they were on the same footing as English corporations. It was no answer to them, they said, to cite the cases of Manchester and other English towns; if these towns were not represented, it was the fault of the corrupt system of representation, for they had a constitutional right to be

represented. They were not represented as the English towns are which send no direct representatives, for it is a legal principle that every British subject within the realm is represented in Parliament.(1) They were not even virtually represented as Manchester and other similar cases, for the unrepresented English have influence thru parentage, relation, friendship, employment, dependence, etc., on the electors and members of Parliament, which the Americans do not have.(2)

Shortly after the repeal of the Stamp Act, Richard Bland advanced a doctrine displacing virtual representation with virtual consent as a basis for legislation. The inhabitants of Great Britain are subject to the authority of Parliament, not because they are virtually represented, but by a principle of natural law that every man who remains in a kingdom gives virtual consent to the laws of that kingdom, passed by its constitutional legislature. But the colonists, dissatisfied with these laws, had exercised their natural right in leaving the kingdom and setting up for themselves, in a new country, a government of their own, according to the terms of a compact with the sovereign of the nation they had left.(3) This theory was consistent with

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(1) S. Adams Writings I. pp. 368-372.
(2) Dulaney in Tyler, Literary History I, pp. 101-114; also E. Bancroft, Controversy, Etc., pp. 96-100; Hamilton Papers I, pp. 89-91.
(3) Bland, An Enquiry Etc., pp. 13, 14, 16.

the later natural rights doctrine and secured the approval of some of its leading advocates.(1)

Representation in the body which taxes them was thus held and recognized to be a constitutional right of British subjects within the realm. How did the colonists derive a claim to this right?

(a) By charters and other royal instructions, the colonists say, they are entitled to all the rights and privileges of British subjects within the realm, including the right to be represented in the body which taxes them.(2) Franklin said that the people of Pennsylvania considered this grant of their charter to be valid even in the face of an express reservation, in the same charter, of the authority of Parliament to tax them;(3) but by some of the colonists this clause of their charter was considered simply confirmatory of existing common law rights.(4)

(b) By "Sundry acts of Parliament from the reign of Edward III,"(5) and by an act of the 13th George II (ch.9)(6)

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(1) See Jefferson, Summary View, on natural right to leave a country; also S. Adams II, pp. 256-264.
(2) Otis, Rights Etc., pp. 51-55; S. Adams I, pp.7-12, 39-61, 61-71, and II, pp. 256-64; also Virginia Stamp Act Resolves, in Knox, Controversy, Appendix pp. 38-43.
(3) Cobbett, Parliamentary History XVI. p. 158.
(4) Gibbes, Documentary History I, pp. 6-8.
(5) Mass. State Papers, pp. 137-8.
(6) Mass. State Papers, Appendix p. 107; S. Adams Writings I, pp. 39-61; Mass. Stamp Act Resolves, Knox, Controversy, Appendix pp. 38-43.

the colonists base a claim to the rights, privileges and immunities of British subjects within the realm.(1)

(c) By common law also the colonists claim the rights of British subjects.(2) Otis quotes Coke and the Calvin case to show that the colonists are natural-born subjects by common law.(3) At first the colonists did not seem to doubt that the common law of England extended to them.(4) But some later writers thought that the English common law had no binding force without the realm and that the colonists brought with them just so much of it as they chose to adopt and no more.(5)

(d) "By the law of nature and of nations", the Americans claim, on the authority of Vattel, colonists "naturally become part of the state with its ancient possessions and entitled to all the essential rights of the mother-country".(6)

3. The colonists claimed that, by precedent, they were exempt from taxation without their consent. They claimed they had not been taxed by Parliament prior to 1764.(7)

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(1) Otis, Rights Etc. p. 51; S. Adams II, pp. 350-9.
(2) Otis, Rights Etc., p. 51; Fitch, Reasons Why Etc.; S. Adams Writings I, pp. 61-71.
(3) Otis Rights Etc., Appendix, pp. 106-112.
(4) Ibid., 106-7.
(5) Novanglus, pp. 94, 95. Franklin had privately expressed this opinion in 1769 - Bigelow IV, 300.
(6) Otis, Rights Etc., Appendix, pp. 106-7.
(7) Stamp Act Resolves of New York and Virginia; Dickinson, Writings, pp. 335, 336, 338; Novanglus pp. 100, 103.

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If such acts as the 25th of Charles II are revenue laws, they are precedents of power rather than of right and equity.(1) Franklin did not regard the revenue collected thru the Post Office Act as a tax. "The money paid for the postage of a letter . . . . is merely a quantum meruit for a service done."(2)

4. The colonists also claimed that they were exempt from Parliamentary taxation by the law of nature - their natural rights as men, not as British subjects. By 1774 many American leaders were coming to deny that Parliament had any constitutional right over the colonies at all; that not only taxation, but all their laws and governments were based on nature and compact; that Parliament was permitted to regulate their trade and pass other laws of a general nature.

The natural rights philosopphers were frequently quoted - Grotius, Vattel and Puffendorf; Bourlamaqui and Montesquieu; Hooker, Milton, Sidney, Harrington, Selden and Locke. Coke was freely quoted on natural law by James Otis and John Adams; Blackstone by Alexander Hamilton and Judge Drayton. But the Americans seem to have been most influenced by the English writers, particularly Locke.

According to the natural right doctrine a state of nature existed antecedent to all human goverment. Some of the

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(1) Otis, Rights Etc., p. 94.
(2) Cobbett, Parliamentary History XVI. p. 148.

Americans seemed to believe in the reality of this state of nature,[1] others considered it an ideal condition.[2] In this state of nature, all men were considered equal, and on this the colonists based their claim that all men were entitled to equal rights and privileges.[3] In this state of nature, all men possessed certain inalienable rights - rights which could not rightfully be taken from them,[4] and which they themselves could not give up.[5] The principal inalienable rights are right to life, liberty, private property, and to the disposal of that property.[6] The liberty of man in a state of nature, and of independent states, is "to be free from any superior power on earth, not to be under the will or legislative authority of men, but only to have the law of nature for his rule".[7]

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(1) J. Adams III, P. 449; Hamilton pp. 75-76.

(2) Otis, Rights Etc.

(3) Their ideas of the equality of man were variously stated. It was sometimes stated that all men were equal in a state of nature. (Hamilton, p. 76), sometimes that all men are born into society equal (Otis, Vindication, Etc., in Tyler I, pp. 43-44; J. Adams, Canon and Feudal Law; Declaration of Independence), sometimes that all men are equal by nature (Novanglus, p. 12), and sometimes that nature has given all men equal rights (Hamilton, p. 89).

(4) Otis, Rights Etc. p. 45; J. Adams, Canon and Feudal Law; Gibbds Documentary History I, pp. 11-39; Hamilton Papers, pp. 76, 135.

(5) Otis, Rights Etc., Appendix pp. 108-111; S. Adams Writings II, pp. 350-9.

(6) Otis, Rights Etc. 20; S. Adams Writings II, pp.350-9; Mass. State Papers pp. 342-57; Hamilton Papers pp. 76,103; Declaration of Independence.

(7) Otis, Rights Etc., p. 45 - Quoted from Locke.

Such was conceived to be the condition of man in a state of nature. Men in this state were thought of as forming governments by original compact, each consenting to give up some portion of his liberty to secure the rest.(1) The Americans did not insist on the reality of this compact by which government was originally created, but used a modification of it more attractive to human reason and more conducive to their immediate ends. Our ancestors left England as they had a natural right to do,(2) and settled without the realm in an independent country.(3) Being thus in a state of nature with England, they formed a compact with its King establishing his authority over them.(4) This idea that the charters are compacts establishing governments began to gain ground during the resistance to the Townshend Acts.(5) It was generally accepted by the writers of the later period (1774-1776).

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(1) S. Hopkins Rights of the Colonies Examined, R.I. Col. Records; Paine, Common Sense.

(2) See pages 18-19 for natural right to leave a country.

(3) S. Adams Writings I, pp. 256-264.

(4) Novanglus pp. 95, 96; Hamilton Papers pp. 80-81. Otis thought the kings of England owed their throne to the compact - express or implied - formed between William III and the people of England and the colonies after Great Britain had been thrown into a state of nature by the abdication of James II - Otis Rights Etc., pp. 22-23; Hamilton held that our compact took no cognizance of the way the English kings came to the throne (Hamilton, pp. 80-81). J. Adams thought each colony made a separate compact (charter) and that the King was at the head of many different realms (Novanglus p. 96).

(5) Hutchinson, History of Mass Bay IV. p. 172; also Dickinson, Farmer Letters.

Governments having been originally formed by compact, according to the natural right philosophy it follows that all just government rests on the consent of the governed.(1) All subjects, it is true, could not give consent, expressly or virtually, to the original compact by which the government was created, but every man when he becomes of age has a natural right to choose what government he will live under.(2) If he remains in his native land, he virtually consents to its laws.(3) The chief ends of government being the security of the natural inalienable rights - life, liberty and property,(4) and property being admitted to have an existence in the state of nature(5) it follows that taxation, - the taking of private property - without consent is a subversion of the ends for which government was created and a violation of the laws of nature which no law of society can make good.

The object of government being the good of the whole, it follows that whenever any body of men in whom the people have entrusted the administration of government fail to govern for the general good, they forfeit the powers placed in their

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(1) Hamilton Papers p. 76; Novanglus p. 85; Declaration of Independence.

(2) Otis, Rights Etc., pp. 15-16; Bland, An Enquiry Etc. pp. 13, 14, 16;

(3) Otis, Rights Etc., 15-16; Bland, An Enquiry Etc., pp. 12, 14, 16; S. Adams thought a man could not become a subject but by express compact. S. Adams Writings II. pp. 256-64.

(4) Otis pp. 14, 15; Letter of the Mass. House to Shelburne, Mass. State Papers pp. 137-41; S. Adams Writings II, pp. 313-21; Hamilton Papers pp. 76-77; Declaration of Independence.

(5) Shelburne Letter, Mass. State Papers, p. 138.

hands and may be deposed. When Parliament exceeded what the colonists considered its constitutional powers, the remedy prescribed was nullification, advocated in principle by Hopkins, Dickinson and others, and made efficient in practical operation in the case of the Stamp Act. When the King violated his compact, the remedy advocated and put into practice was secession. "A manifest design in the Prince to annul the contract on his part, will annul it on the part of the people. A settled plan to deprive the people of all the benefits, blessings, and ends of the contract, to subvert the fundamentals of the constitution; to deprive them of all share in making and executing the laws, will justify a revolution".(1) "Whenever any form of Government", wrote Jefferson, "becomes destructive of these ends (for which it was created), it is the Right of the people to alter or to abolish it; and to institute a new Government." Now, because we have suffered " a long train of abuses and usurpations" from the King of Great Britain, we do "solemnly publish and declare, That these United Colonies are, and of Right ought to be Free and Independent States." This declaration, when adopted by the representatives of the colonies, transformed the American Revolution into a War of Independence.

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(1) Novanglus, pp. 12-13.

CHAPTER IV.

THE ENGLISH CONCEPTION OF BRITISH GOVERNMENT.

The English conception of the government of the British possessions was an imperial one. This is thoroughly true of those who supported the measures for the taxation of America and generally true of the whole; for Burke believed that in the last analysis Parliament had a right to legislate for the colonies "in all cases whatsoever", and supported the Declaratory Act in an able speech;(1) and even Chatham thought Parliament was supreme over the whole British possessions in all matters of legislation, altho he made a rediculous distinction between the right to legislate and the right to tax.(2) If the policy of the government under different ministries, or even under the same ministry, was sometimes weak and vacillating, their principles were certainly more consistent than those of the colonists.

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(1) Burke supported the Declaratory Act in 1766, apparently to prevent the humiliation of a complete backdown by the British government. But in 1774 (Speech on repeal of the Tea Duty) he asserted that the question of right was one for doctors and philosophers to wrangle about and that practical statesmanship demanded the removal of all taxes laid by Parliament on the colonies, as a matter of expediency.

(2) Cobbett, Parliamentary History XVI. pp. 97-100, 103-8. The Declaratory Act was passed by a Whig ministry friendly to America without a division. "And this was, perhaps, the only question that could have been thought of, upon which the ministry and their antagonists in the opposition, would have gone together on a division." Annual Register for 1766, p. 203.

The British possession, say the advocates of this imperial idea, form one nation, a British Empire. This Empire is a union, a state, not a confederation or alliance.(1) It embraces the ancient realm of England and the territories that have been annexed to it including the colonies.(2) That the colonies are part of the British Empire is attested by the best writers on the law of nations, says a Tory writer, using the same quotations from Vattel that the colonists have applied to show that they were entitled to all the rights of British subjects.(3)

There was a general feeling, however, that the colonies were, to some extent, inferior or subordinate to the parent state. It is a fundamental law of the realm,(4) and is generally acknowledged,(5) that colonists are subordinate to the mother-country. In an economic sense, this inferiority had been shown by their subjection to the laws of trade and

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(1) Grenville, Regulations Etc., pp. 39-44.
(2) Massachusettensis, 174. Knox believed the colonies were within the realm because they were crown estates and it is the estates of the crown that make up the realm (Controversy Etc. pp. 70-71).
(3) Massachusettensis, p. 179; Hutchinson in Mass. State Papers, p. 337; A Letter to an M. P., 1774. For quotation from Vattel, see. p. 20.
(4) Tucker, Letters Etc., 1766, p. 40.
(5) Camping, Letters Etc. pp. 22-23.

navigation and the principles of the Mercantile System. Grenville was a devotee of this system and believed that colonies existed for the benefit of the parent State.(1) That this was true in a political sense as well, was the belief of those who supported the Stamp Act. The colonists, said Lord Mansfield, "by the conditions on which they migrated, settled and now exist, are more emphatically subject to Great Britain than those within the realm".(2) Some of the American Tories thought the colonists, from their location, could not enjoy all the liberties and immunities of the mother-country, and must remain dependent.(3) Even the American Whigs had admitted their dependence, altho they probably had no clear idea that they meant anything more than commercial dependence.(4)

Did the British constitution with all its obligations, rights and privileges extend to the colonies? This question was generally answered in the negative. It was believed that there must be some curtailment of the constitutional rights extended to the colonies. The British constitution grew up

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(1) Grenville, Regulations Etc., p. 89.
(2) Cobbett, Parliamentary History XVI., pp. 172-3.
(3) Hutchinson, Letters, quoted in Lecky, III, p. 381; Martin Howard, Letters from a Halifax Gentlemen, Etc. quoted in Hart, Contemporaries, p. 394, and Tyler I. p. 71.
(4) Boston Instructions of May, 1764, in Appendix to Otis, Rights Etc., p. 105.

within the realm, and hence constitutional rights belong only to the subjects within the realm. The mother-country may grant the colonists such of these rights as it sees fit or thinks they are capable of enjoying. It does not follow, however, that the colonists are exempt from her authority. She may still hold them in dependence. "In any other sense a colonist is not a subject suffered to transplant himself for the benefit of his native country, but an unnatural rival nurtured for her destruction."(1) Martin Howard, a Rhode Island Tory, attempted to define exactly what constitutional rights extended to the colonies. The English common law extends to the colonies and carries with it all the personal rights of Englishment including those of life, liberty and property; but the common law does not guarantee political rights. The colonists are entitled to such political rights only as are granted to them in their charters.(2)

The bond of union between colonists and mother-country was conceived to be a common subjection to the British constitution and government in all its departments. This embraced (a) allegiance to the crown and (b) submission to Parliament.

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(1) Phelps, Rights Etc., p. 16; Constitutional Consideration Etc., 1766; Bernard, Principles Etc.
(2) Letters from a Gentleman at Halifax, pp. 6,8,21, quoted in Howard, Preliminaries Etc., pp. 33-4.

(a) Allegiance was thought to be due to the crown, or the King in his political capacity, and not to his natural person. The crown lands, whether conquered or discovered, are the property of the state, under the control of the King, as its representative. In the history of all civilized nations, the heads or representatives of the state have, by special grants, distributed these lands among the people, the people in each case retaining their duty as subjects.(1) According to the ancient doctrine of feudal tenure, the crown retains a dominion in all lands and tenements of English subjects. The lands of America were discovered by Sebastian Cabot, who sailed with a commission granted by the King under the great seal of England, which distinguishes public acts of the crown from private acts of the King.(2) Their charters and grants of government are also from the crown. They were granted under the great seal and their grants and reservations are by and for the Kings, his heirs and successors. The Kings never claimed the lands as private property. That they considered them as belonging to the crown, and not to the King personally, is shown by the fact that when Parliament was about to pass a bill

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(1) Galloway, A Candid Examination Etc., pp. 18, 25; Hutchinson in Mass. State Papers, p. 270.
(a) Massachusettensis, p. 174.

concerning the colonies, King Charles I. sent them a message that the Privy Council would look after them, and the bill did not become a law.(1) The King might rule other realms, it is true, but his subjects there would be aliens, not subjects of Great Britain.(2)

(b) The authority of Parliament was considered as extending over the whole British Empire. It was conceived to be the supreme power of the state. It is of the nature and essence of government, that a supreme and absolute jurisdiction must be lodged somewhere, an authority to which every other power of the state is subordinate and to which every member must yield full and perfect obedience. The supreme power of every state, according to Locke and Acherly, is the legislature This supreme legislative in Great Britain is vested in the King, Lords and Commons in Parliament.(3)

The British believed that this unlimited power of Parliament extended to the colonies. It can extend without the realm , they say, for it is coextensive with the authority

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(1) Annual Register for 1766, pp. 198-200.
(2) Tucker, Pleas and Arguments Etc., pp. 14-15.
(3) Howard, in Hart, Contemporaries, p. 395; Letter to an M. P., 1765; Bernard, Principles Etc.; Hutchinson in Mass. State Papers, pp. 337-40; Massachusettensis, pp. 143, 170; Galloway, A Candid Examination Etc., pp. 10-14; Phelps, Rights of the Colonies, Etc. pp. 3,6,8; McPherson, Rights of Great Britain, Etc. p. 3; Tucker, Pleas and Arguments, p. 12.

of the crown; but it is an established rule of construction, which also confirms the authority of Parliament, that those parts of the Empire without the realm are not bound unless named in the act.(1) That the American party in Parliament generally acquiesced in this view, is shown by the fact that against the Declaratory Act, "Pitt could muster but two votes in the Commons and Shelburne but four in the Lords"(2). Burke shared this opinion, but thought subordination and liberty might be sufficiently reconciled.(3) Thus the right of Great Britain to legislate for every portion of the Empire was based on its sovereign power as supreme legislature.

The power of legislation was held to include the power to lay taxes of all kinds. The distinction, attributed to the Americans, between the right to lay internal and external taxes, was denied, and the power of Parliament to lay both was asserted.(4) The distinction between the right to lay duties for revenue and for the regulation of trade, was likewise denied. "It is the same thing to me whether you restrain me from earning a penny or take the penny from me after I have earned it," said an English writer.(5) This distinction was ridiculed by Knox as " of all

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(1) Hutchinson in Mass. State Papers, pp. 375,377-8; Mansfield in Cobbett, Parliamentary History XVI., pp. 172-6. Parliamentary jurisdiction follows every Englishman wherever he goes. Martin Howard in Hart, Contemporaries, p. 395.

(2) Greene's History of English People IV., p. 342.

(3) Speech for the repeal of the Tea Duty; Bristol Speech, Oct. 13, 1774.

(4) Grenville, Regulations Etc., pp. 109-110; An Examination Etc., 1766; Canning, Letters Etc., 1768.

(5) The Constitutional Rights Etc., letter 3.

absurdities, the most ridiculous that was ever contended for;" because it gave Parliament the right to impose a heavy duty, but not a small one. Knox thought it would be easy to evade this distinction, and collect sufficient revenue under the guise of regulating trade; for, he says, according to the principles of the colonists and the definition of ta tax given by Dickinson in the Farmer Letters,(1) all taxes, even the Stamp Act,(2) are regulations of trade. No kind of a tax was considered beyond the legislative reach of Parliament. "Taxation is a part of sovereign power, one branch of legislation," was Grenville's reply to Pitt's distinction between the power to tax and the power to legislate.(3)

During the lull following the repeal of the Stamp Act and preceding the passage of the Townshend Acts, the colonists were beginning to accept the Parliamentary doctrine that the powers of taxation and legislation are inseparable, and to deny the right of Parliament to lay either. The Tories in America were quick to take alarm. At this time, writes Hutchinson, none of the colonies admitted the right of Parliament to tax them, and "designing men were beginning to see that, by degrees, the doctrine, 'no representation, no taxation' was changing to the doctrine,'no representation, no legislation'"(4) - a doctrine

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(1) "An act of Parliament commanding us to do a certain thing, if it has any validity, is a tax upon us for the expense it accrues in complying with it". Farmer Letters.
(2) Knox, Controversy Etc., pp. 34-35, 38-42, 50-51,52-57.
(3) Cobbett, Parliamentary History XVI., pp. 101-3; See also the Constitutional Rights Etc., letter 1.
(4) Hutchinson, History of Mass. Bay III, pp. 164-5.

which, as has been noted, had already found expression in some quarters and was soon to become widely accepted.

The advocates of Parliamentary rights ridiculed this shifting of ground by the Americans. When they were opposing the Stamp Act they set up a distinction between internal and external taxes. When Parliament adopted this distinction and laid the Tea Duty, a new distinction was set up between the right to raise a revenue and the right to regulate trade. The next step was to deny the right of Parliament to legislate for them at all.(1) The meaning of this step was unmistakeable; for there can be no line drawn between the denial of the authority of Parliament and absolute independence.(2)

But altho unlimited general legislative power was ascribed to Parliament by all controversialists except the American Whigs, yet British Whigs and American Tories sometimes prescribed restrictions to the taxing power of Parliament over the colonies. Pitt's limitation by definition has been considered. Daniel Leonard imposed a constitutional limitation: "The supreme legislature can have no right to tax any part of the Empire to a greater amount than its just and equitable proportion of the necessary national expense. This is a line drawn by the constitution itself."(3)

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(1) Knox, Controversy Etc., pp. 34-35; Massachusettensis, pp. 173-4. Knox thought the real distinction which the Americans objected to was that between imposing taxes and collecting them. Controversy Etc., pp. 43-44.

(2) A Plain and Seasonable Address Etc., 1766; Hutchinson in Massachusetts State Papers, pp. 337-40; Massachusettensis p. 198.

(3) Massachusettensis, p. 203.

Burke's view concerning the taxing power of Parliament was an imperial one. It was constitutionally justifiable, but expedient only as a last resort. The right of Parliament to tax the colonies was unlimited, but it was "an instrument of empire," to be used in forcing payment from portions of the empire which refuse or neglect to tax themselves for common purposes, and "not as a means of supply."(1) It was not unlike that of Grenville, except that, in some case, Grenville would advise taxation by Parliament in the first instance. Parliament, says Grenville, exercises its power over the colonies only in cases, like a general tax, which the assemblies cannot provide for. "The exertion of that authority which belongs to its universal superintendence, neither lowers the dignity nor depreciates the usefulness of more limited powers. They retain all that they ever had and are really incapable of more."(2)

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(1) Speech for repeal of Tea Duty, 1774.
(2) Grenville, Regulations Etc., pp. 112-113.

CHAPTER V.

THE ARGUMENT IN FAVOR OF THE RIGHT TO TAX.

The British considered taxation as a sovereign power. The right to tax, as well as to make other legislation of a public nature, was considered an attribute of sovereignty, without which government could not exist; and Parliament, as the sovereign legislative body of the British Empire, was vested with the right to tax all British subjects within that Empire.(1) The end of government is protection; the supreme power must be able to supply protection; this is impossible without revenue.(2)

1. The claims of the colonists that their charters exempted them from taxation by Parliament was met by denial both of the truth of the statement and of its possibility. It was conceived that the colonies are corporations created by the crown under its prerogative to constitute corporations or political bodies and grant them the necessary powers of government, that they have no legal or constitutional claim to greater rights and exemptions than other English corporations, but, like them, are limited by the powers granted in their charters.(3) In speaking of the original Massachusetts grants

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(1) Bernard, Principles Etc., Par. 30; Knox, Controversy Etc., pp. 55-57; A Plain and Seasonable Address Etc., 1766, p. 10; A letter to an M. P., 1774, pp. 23-24.
(2) Massachusettensis, p. 198.
(3) Martin Howard in Hart, Contemporaries pp. 394-5; Mansfield, in Cobbett, Parliamentary History XVI., pp. 175-6; A Letter to an M. P., 1765, p. 12; Hutchinson, History of Mass. Bay, III, pp. 358-9, also in Mass. State Papers, pp. 332-3.

of government, Hutchinson said, "Nothing can be more plain than that the charter, as well as the patent to the council of Plymouth, constitutes corporations in England, with power to create a subordinate government or governments within the plantation."(1)

The terms of the charters, instead of exempting from the authority of Parliament, guard against such exemptions. The Maryland charter alone contains an express exemption from Parliamentary taxation, but "other parts of the same charter declare the contrary and expressly retain the submission to the subject of British laws."(2) The people of Maryland have always taken this to mean that the King could not tax them by his prerogative.(3) On the other hand, obedience to Great Britain is expressly enjoined in all these charters.(4) The Pennsylvania charter expressly reserved the right of Parliament to tax the people of the colony;(5) and the charters of the other colonies must be understood as implying it.(6) Even the grants and exemptions of the charters show the supremacy of Parliament. The clause granting legislative power "not repugnant to the laws of England," if it has any significance

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(1) Mass. State Papers, pp. 373 -4.
(2) Galloway, A Candid Examination Etc., p. 28.
(3) Knox, Claims Etc. pp. 5-9.
(4) Knox, Controversy, pp. 70-71; Grenville, Regulations, pp. 110-111.
(5) Knox, Claims Etc., pp. 5-9. Controversy pp. 70-71.
(6) Tucker, Letters, Etc. 1766, pp. 6-9.

at all, is a limitation on the Assembly and a reservation of the powers of Parliament.(1) The exemptions from taxation for a limited time, plainly indicate the liability to tax after the expiration of the specified time.(2) It could not have been the sense of the early colonists that these taxes were to be laid by the King's prerogative, rather than by Parliament; for, at the time the Massachusetts charter was granted (1628), one of the principal patentees, Samuel Vassal, "was suffering the lose of his goods rather than submit to the imposition laid by the King without the consent of Parliament."(3)

Even if the charter had granted, in express and unmistakeable terms, the exemptions claimed by the colonists, the grants would be invalid; for the King has no right to make such exemptions. The King cannot alienate subjects from their allegiance to the nation, nor their obedience to Parliament. As representative of the executive power of the state, he can affix the great seal "to all acts of the legislative and such as he is empowered to do by his prerogative, and no other."(4) His prerogatives are known and defined. He can establish and define the limits of thecolonies and "vest them with power to make municipal laws, for the regulation of their internal police," but he cannot discharge them from obedience to Parliament.(4)

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(1) Hutchinson, in Mass. State Papers, p. 339.
(2) Massachusettensis, p. 174; Hutchinson, in Mass. State Papers, pp. 373-4.
(3) Hutchinson, in Mass. State Papers, pp. 373-4.
(4) Galloway, A Candid Examination Etc. p. 17.

"The crown cannot disunite itself from its connection with the state under any idea of prerogative, much less can it emancipate a subject from these laws, to which itself is bound; for prerogative in the hands of the crown, in a general sense, is what privilege is in those of Parliament, in a more confined one; they are both intended, in certain cases, to enforce the power, or alleviate the rigor of the law; not to carry it into oppression or to defeat its effect . . . . No prerogative can go beyond law, consequently no charter."(1) The King could not, in the colonies any more than in the realm, alienate the territory from the crown and establish governments independent of Parliament.(2) The authority of Parliament is founded on common law, prior to the grant of the charter, and cannot be abridged by the King.(3)

Not only was it held that the King cannot alienate any portion of the legislative power of Parliament, but that even Parliament itself cannot do so irrevocably. "The jurisdition of Parliament being established, it will follow that the jurisdiction cannot be apportioned; it is transcendent and entire."(4) The power to tax has, according to Locke, been expressly delegated to Parliament from the people and cannot be transferred, even by Parliament itself, much less by a King who gets his throne

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(1) Phelps, Rights Etc., pp. 9-10.
(2) Hutchinson, in Mass. State Papers, p. 370.
(3) Martin Howard, in Hart, Contemporaries p. 395.
(4) Martin Howard in Tyler, Literary History, Etc. I, p. 73.

from Parliament.[1]

These charter grants, it was thought, could be modified or repealed by Parliament, or annulled by Parliament or the courts.[2] Bernard held the opinion that while the King could bind himself and his successors, he could not bind Parliament, "nor can the Parliament bind their successors nor even themselves".[3] Not only has Parliament the right to annul these charters, but the colonists may, "at any time be deprived of their boasted privileges and immunities by the ordinary and inferior operations of a scire facias or a Quo Warranto."[4] In the time of Charles II, the Massachusetts charter "was vacated in chancery for the abuse of it. Now is it possible," says Mansfield, "to suppose that a legislature can exist with a sole power of laying taxes, which legislature may be destroyed by a process in the courts of chancery or King's Bench?"[5]

The charters, says Bernard, are simply temporary grants to infant or growing colonies, and not intended for permanent constitutions. In many respects they are unconstitutional, and contrary to the nature of the British Government. If they could be pleaded against the authority of Parliament, it would mean the dismemberment of the British Empire.[6] These charter claims, says Tucker, in a sarcastic vein," are quoted

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(1) Knox, Controversy Etc., pp. 71-73; 137-8.
(2) Hutchinson, in Mass. State Papers, pp. 338-3.
(3) Principles Etc., Par. 17-18.
(4) A Letter to an M. P., 1765, p. 13.
(5) Cobbett, Parliamentary History XVI., pp. 175-6.
(6) Principles Etc., Par. 76-79.

only by the by as a kind of supernumerary proof, and as a sort of analogical reasoning, fit only for those whose weak minds cannot digest arguments of a superior strength and quality."(1)

If, then, the charter did not, and could not, exempt the original settlers from taxation by Parliament, the claims of the colonists on that score were worthless. "What the fathers never received, the children cannot claim as an inheritance."(2)

2. Great Britain pleaded precedent as giving Parliament a right to tax America. Parliament, they claimed, had regulated the affairs of the colonists in every way that "the wit or ingenuity of man could possibly devise."(3) The authority of Parliament over the colonies had been expressly asserted on several occasions before the Declaratory Act. In 1650 an Act of Parliament declared that they had always been and ought to be "subject to such laws, order and regulations as are or shall be made by the Parliament of

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(1) Tucker, Pleas and Arguments, p. 40.
(2) Grenville, Regulations, Etc. pp. 110-111.
(3) A Letter to an M. P., 1774, p. 30.

England."[1] The act of William III altering the succession to the throne of England asserted in the strongest terms the ascendency of Parliament in the whole British Empire; not only did Parliament enforce a change of rulers over America but the act contained an oath that the King would govern according to the statutes of Parliament. The succession was againsregulated by Parliament in 1714.[2] An Act of the 7th and 8th William III establishing admiralty courts asserted the supremacy of Parliament in unmistakeable terms by declaring null and void all acts of colonial assemblies passed or to be passed contrary to acts of Parliament.[3] The piracy act (11 & 12 William III), which vested piracy cases in Admiralty courts, threatened forfeiture of charters.[4]

This supremacy was acknowledged, said Hutchinson, at least on the part of the inhabitants of Massachusetts, for shortly after the succession was altered, knowing the royal oath, they petitioned for a new charter and in an address to the King they acknowledged that they could not make laws repugnant to those of England.[5]

Not only has Parliament regulated the trade or external affairs of the colonies but it has passed many acts regulating their internal affairs. Among these have been enumerated the

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(1) Massachusettensis, p. 198.
(2) Hutchinson, in Mass. State Papers, pp. 377-8; Knox, Controvery Etc., Appendix Note. p.33; A Letter to a M.P.,1774.
(3) Tucker, Letters Etc., title page; McPherson, Rights Etc., p. 27.
(4) Knox, Controversy, Etc., p. 175, Appendix Note p. 33; McPherson, Rights Etc., p. 28.
(5) Hutchinson, in Mass. State Papers, p.p.377-8.

following:[1] Acts of the 3rd and 4th Anne and of the 2nd George II prohibiting the cutting of tar and pitch pine trees in some of the colonies, and providing that penalties shall be sued for in Admiralty Courts; the Act of the 5th George II prohibiting the manufacture of hats; and that of the 24th George II c.39, and other acts for restraining manufacture; the naturalization act (13 George II), making British subjects of foreigners who have lived a certain number of years in the colonies; the act of the 14th George II, dissolving the Massachusetts Land Bank; the act of the 6th Anne, fixing the values of foreign coin; the act of the 24th George II, prohibiting issues of paper money in the Northern Colonies; the act of the 24th George II, c. 35, dissolving indentures by empowering British officers to enlist, in the colonies, apprentices and indenture servants; the act of the 5th George II, abrogating that part of the common law relating to the descent of the freeholds and making them assets for debt in the same manner as in England, which was passed after the colonial assemblies had refused to pass it, and an act "altering the nature of evidence of the courts of common law by making an affidavit of a debt before the Lord Mayor of London Etc., certified in writing, an evidence in

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(1) For an enumeration of these regulations of the internal affairs of the colonies, see Knox, Controversy Etc., pp. 175-9; Pownall, Administration Etc., pp. 125-7; McPherson, Rights Etc., pp. 34-35; Mass. State Papers, pp. 378-9.

their courts in America".(1)

Acts of Parliament have also been passed which were unmistakably revenue acts. As early as 1646, says Pownall, Parliament laid an excise tax on the colonies. This act exempted the plantations from all customs, subsidies, taxes, impositions or other duties, excent the excise, provided their trade was carried on in English bottoms, otherwise they were made liable to all these duties; but Pownall thinks no precedent can be drawn from this period, because, in its relations to the colonies, Parliament was acting in its capacity as executive - the successor of the King - and not in its capacity as legislative.(2)

The first clear revenue Act was the 25th Charles II, c.7, still in effect.(3) This act, enforced by the 7th and 8th William III, c.22, and by the 1st George I., c. 12, laid duties, payable on exportation, on sugar, tobacco, cotton, indigo, ginger, logwood, fustick and cocoa sent to foreign countries or from one colony to another. It provides how the tax shall be "levied, collected and paid", provides the same penalties for violation as for "defrauding his Majesty of his customs in England," and provides that the duties shall "be levied by the commissioner of customs in England, by and under the authority of the Lord treasurer of England or commissioner of the treasury". The Act of the 7th and 8th William III. entitled "an act for preventing frauds and regulating abuses in the plantations", provides that the officers "for

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(1) Pownall, Administration Etc. pp. 125-7.
(2) Ibid, pp. 128-4.
(3) McPherson, Rights Etc., pp. 37-38.

collecting and managing his Majesty's revenue" in the colonies shall have the same power and authority concerning searching of ships and seizure of goods as in the mother-country. "It is apparent from the reasoning of the statute," says Leonard, "that these duties were imposed for the sole purpose of revenue."(1)

Another revenue act, still in force in the colonies, is that which provides taxation for a seaman's hospital at Greenwich. It enacts "that every seaman, whomsoever, that shall serve his Majesty, or any other person whatever in any of his Majesty's ships or vessels, whatsoever, belonging or to belong to our subjects of England, or any other of his Majesty's dominions, shall allow and there shall be laid and paid out of the wages of every such seaman, to grow due for such service, 6d. per annum for the better support of the said hospital and to augment the revenue thereof".(2)

The Molasses Act (6th George II., c.13) laid a duty on all foreign rum, molasses and sugar, to be raised, levied, collected and paid into and for the use of his Majesty, his heirs and successors." This act contained the technical words

(1) Massachusettensis, p. 300; also Grenville, Regulations Etc. p. 104; Knox, Controversy Etc., pp. 167-171; Pownall, Administration, pp. 125-7; A Letter to an M. P., 1774, p. 20; McPherson, Rights of Great Britain, Etc. pp. 37-38.

(2) Massachusettensis, p. 300; Knox, Controversy Etc., 171-2; Pownall, Administration Etc., pp. 125-7; McPherson, Rights of Great Britain, Etc. pp. 38-39.

"give and grant" in its preamble. It was attacked, says Grenville, as unjust and impolitic, but it has never been considered unconstitutional.(1)

Pownall considers the expense of quartering soldiers and supplying them in their quarters, as a tax.(2)

"It is in vain", says Grenville, "to call these only regulations of trade; the trade of British subjects may not be regulated by such means, without the concurrence of their representatives. Duties laid for these purposes as well as for purposes of revenue, are still levies of money upon the people. The Constitution knows no distinction between impost duties and internal taxation".(3) The argument that Parliament has not laid internal taxes, is of no validity, says Knox. The novelty of ta tax is no argument against the right to levy it. If so, it could be used with equal force against the first land tax in England, the cyder tax or any other new tax to which English subjects at home have submitted.(4)

But the most authoritative case of internal taxation in the colonies was the Act (9 Anne, c. 10) provided for the establishment and maintenance of the Post Office in America, and

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(1) Grenville, Regulations, Etc. p. 104; Massachusettensis, p. 201; Pownall and Burke do not consider this a revenue act. Burke says its title clearly shows it to be a regulation of trade. Burke, Speech for repeal of Tea Duty, 1774; Pownall, Administration Etc.,pp. 125-7.
(2) Pownall, Administration, pp. 135-7.
(3) Grenville, Regulations Etc., p. 105.
(4) Knox, The Claims Etc., pp. 14-15.

providing that "the revenue arising by the said office be better improved, settled and secured to his Majesty, his heirs and successors". The passage of ferries was free. Certainly, says Grenville, this is a public tax and not a price paid for an accommodation. Mansfield said, If there is a distinction between external and internal taxation, then the Post Office act is unmistakably an internal tax.(1) It treats American postage on exactly the same footing as British and expressly calls both a revenue. The revenue arising from postage in both America and England are blended and "applied in part to the carrying on of a continental war and other public purposes; the remainder of it to the support of the civil list; and now the whole of it to the discharge of the national debt by means of the aggregate fund; all these are services that are either national or particular to Great Britain . . . . . If "says Grenville, "these circumstances do not constitute a tax, I do not know what do; the stamp duties are not marked with stronger characteristics to entitle them to that denomination."(2)

It is evident, say the British, that Parliament has been in constant exercise of its right to tax the colonies. The Americans have acquiesced in these acts. Until recently

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(1) Cobbett, Parliamentary History XVI. p. 176.
(2) Grenville, Regulations Etc., pp. 106-7; Knox, Controversy Etc., p. 176; Massachusettensis, p. 201; Tucker, Letters, Etc., 1766, p. 11.

the constitutionality of such acts was not questioned.[1] In 1764, Whig and Tory leaders (Otis and Bernard) agreed on the right. Leonard quotes Otis as saying in a pamphlet published in 1765,"It is certain that the Parliament of Great Britain hath a just, clear and equitable and constitutional right, power and authority to bind the colonies, by all acts wherein they are named. Every lawyer, nay every Tyro, knows this; no less certain is it that the Parliament of Great Britain has a just and equitable right, power and authority to impose taxes on the colonies, internal and external, on land as well as on trade."[2]

(5) To the American argument that they were exempt from taxation by virtue of a fundamental principle of the British constitution which provides that no man shall be taxed by a body in which he is not represented, the British returned a triple denial; (a) The colonists are not entitled to all the privileges and immunities of British subjects; (b) strict inseparability of taxation

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(1) When Shirley presented his plan for a Parliamentary tax at the Albany Convention, even Franklin did not oppose it on the ground of right, but on that of expediency. Massachusettensis, p. 205.

(2) Massachusettensis, p. 201; 206-7.

and legislation is not true in England; and (c) the Americans are represented in Parliament.

A. It was the sense of the English writers that the Americans were not entitled to all the rights, privileges and immunities of British subjects.(1) Certainly they were not entitled by the British constitution to any rights and privileges which British subjects at home did not possess. The principles of the English constitution do not give exemptions from Parliament, "because that constitution is formed to bind all the members of the state together and to compel an obedience to its law."(2)

1. The clause of their charters granting the liberties and immunities of free and natural subjects, cannot exempt them; for these liberties and immunities depend on location. Americans have the same rights as British subjects born and residing in England, when both are within or both without the realm; but Americans without the realm have only those rights of British subjects within the realm which they are capable of enjoying. This clause, instead of exempting from the power of Parliament, simply means that the colonists are "not aliens, but natural born subjects; and as such

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(1) See pp. 27-29.
(2) Galloway, A Candid Examination Etc., p. 29.

bound to obey the supreme power of the state, and entitled to protection from it."(1)

2. Acts of Parliament could not grant rights and immunities of British subjects that could put the colonists beyond the reach of later acts of Parliament repealing or modifying them.

3. Common Law, according toMartin Howard, carried with it to the colonies the personal rights of Englishmen, but no political rights;(2) it cannot be pleaded against the authority of Parliament, for statute law is superior to common law.(3)

4. That the law of nature can give any one the privileges of immunities of an Englishman, was denied. This, says Knox, in reply to the Pennsylvania Stamp Act Resolutions, "is, I believe a doctrine unknown to all civilians, except the Assembly of Pennsylvania."(4)

Knox made a strong argument against the inconsistency of the double claim of the colonists to (a) the rights and privileges of Englishmen and (b) exemption

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(1) Massachusettensis, pp. 177-8.
(2) See supra p. 30.
(3) Hutchinson, in Mass. State Papers, p. 374.
(4) Knox, Controversy Etc. pp. 13, 18-19; Galloway, A Candid Examination, p. 29.

from taxation by Parliament. If, he says, the colonies are entitled to the constitutional rights and privileges of British subjects within the realm, they must be annexed to the realm and subject, therefore, to its supreme legislature. If they are not within the realm and subject to the authority of Parliament, they can not claim any of the rights and privileges the people of England derive under acts of Parliament or other rights peculiar to British subjects within the realm.(1)

B. By the British constitution, taxation and representation in the strict sense, are not inseparable. Such a doctrine is contrary to usage in Great Britain.(2) The Acts of Parliament granting representation to Chester and Durham show that they were bound by English laws without being named, and liable to taxation, before they were represented.(3) Berwick was bound by acts of Parliament before it was represented. Before Wales was admitted to representation, it was excepted from several revenue acts because it paid a tax (mises) to the King. Ireland, though a separate and distinct kingdom, has been bound by acts of Parliament. If Parliament can bind these parts of the Empire by its acts, it can tax them. Guienne

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(1) Knox, Controversy Etc., pp. 6-8.

(2) This paragraph, except as otherwise designated is based on Mansfield's speech against the repeal of the Stamp Act, Cobbett, Parliamentary History XVI. pp. 172-5; also see Martin Howard, in Tyler, Literary History Etc. 1, pp. 72-73; Jenyns, Objections, Etc. p. 7.

(3) McPherson, Rights of Great Britain, p. 7, quotes an act of the 35th Charles II, c.9, to show that the counties palatine of Chester, Durham, and Lancaster were, before being represented, "liable to all payments, rates and subsidies granted by the Parliament of England."

and Calais were taxed without sending representatives. The fact the Clergy were granted representatives before being taxed, is no proof of the right; for their demand was supported by the Pope, and the King and Parliament were, at that time, too weak to resist it. At present, all the great English corporations - - the Bank, the East India Company, and the South Sea Company; Manchester, Birmingham and other rich trading towns; wealthy merchants, personal property holders and all landed property holders, unless 40 shilling free holders, are not represented, though all are taxed.

Using the term representation, as the colonists do, to mean an actual and distinct representation of all who are taxed, such strict inseparability of taxation and representation has never existed in any country at any time. It is not even true of any of the charter or royal governments in America. "It is not true in the province of Massachusetts Bay, in which, by the last history of it, there appears to be not only a multitude of individuals, but even forty townships of freeholders now taxed who have no distinct representatives".(1)

The American objection to taxation on the grounds of lack of representation extends with equal force to all other forms.

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(1) Knox, Controversy Etc.p.60-61; McPherson, Rights of Great Britain, Etc. p. 4.

of legislation. It denies not only the authority of Parliament, but of the whole British government. The inseparability of taxation and legislation, was asserted by Grenville in reply to Pitt. The inseparability of taxation and government was asserted with equal force.(1) If Great Britain cannot tax the colonies, it follows that she has no authority over them.

The Americans, say the British, have misunderstood or misquoted Magna Charta. They interpret Magna Charta to mean that no man can be taxed except by consent, in person or by deputy, and this is not its true meaning. One writer thinks the clause they refer to must be the one that provides that no man shall be dessesised of his freehold etc. "nisi per judicium parum vel per Legum Terrae". The "law of the land" in this case simply means an act of Parliament."(2) Magna Charta does say, and it is the "known law of the land" that the King can't impose taxes on his subjects in England without the consent of Parliament. It is inferred from this that he can't impose taxes on his subjects out of England with the consent of Parliament. In other words a concession from the crown that the subjects in England shall not

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(1) Lyttleton, in Cobbett, Parliamentary History Etc. XVI, pp. 186-7; Annual Register, 1766, pp. 201-2; A Plain and Seasonable Address, 1766, p. 10; The Constitutional Rights, Etc., 1766, p. 5; A Letter to an M. P. 1774, pp. 26, 28-29; Boucher, a Letter Etc., in Tyler, Literary History Etc. I, pp. 276-8. Massachusettensis, p. 198.

(2) A Letter to an M. P. 1765, pp. 15-16.

be taxed by the King singly, amounts, according to the logic of America, to a law that his Majesty's subjects out of England cannot be taxed at all."(1)

Lord Mansfield went at the root of the matter by attacking the principle on which the Americans based their claim to exemption from Parliamentary taxation. "I deny the proposition that Parliament takes no man's property without his consent: it frequently takes private property without making what the owner thinks a compensation." The idea that no money can be raised without consent is directly contrary to the truth, for it is unconstitutional to raise money for the King by consent of any number of people outside of Parliament.(2) The Declaration of Right makes it illegal and void to levy any 'loan, gift or benevolence' except by act of Parliament.(2) Nor did Locke mean, says Knox, that the supreme power cannot tax a subject's property without his consent, but that the King and Parliament cannot take a man's property for their private use without his consent. The consent, either personally or by representation, of all or a majority of those who pay a tax, has never been considered necessary; indeed if it were insisted on, no taxation would be possible.(3)

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(1) An Examination of the Rights Etc. 1766, pp. 19-20. Knox, Controversy Etc. p. 101.
(2) Cobbett, Parliamentary History XVI.
(3) Knox, Controversy Etc. pp. 80-87.

The people of England, say the English writers, are not distinctly represented in Parliament. The right to a seat in one house and the right to vote for members of the other has always been based on a particular system of Land tenure. At the earliest period to which our historical knowledge extends, the King with his tenants-in-chief formed the supreme legislative; but they were no more representatives of the people than the House of Lords is at the present date. When thru the frequent parceling of the crown domains, the King's tenants-in-chief became so numerous that all could not attend the legislative assembly, the device was hit upon of permitting the lesser tenants-in-chief to choose a few of their number as representatives of the whole; in this way the knights of the shires came into the Commons. Later the Kings, by charter or prescription, granted to certain boroughs and corporations, the right to elect members considered the distinct representatives of the people of England. The members of the elective branch were not even called the representatives of the people, but the Commons in Parliament.(1) The idea of a representation of the people never existed. "The freeholders sat in Parliament as the powers of the state, and when they ceased to be powerful, they ceased to be qualified."(2)

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(1) Knox, Controversy Etc., pp. 61-64, 66. Mansfield, in Cobbett, parliamentary History pp. 172-3; Galloway, Candid Examination Etc. p. 45.

(2) Ramsay, Thoughts Etc. p. 41

C. But, say the British, the colonies are represented in Parliament according to the constitutional system of representation in practice in England. "All British subjects are really in the same (condition); none are actually, all are virtually represented in Parliament; for every member chosen to sit in Parliament represents not only the constituents or inhabitants of the particular place for which he is chosen, but forms one of the great assembly which is in duty bound to look after the interests of all the commons of Great Britain and the inhabitants of all her colonies and dominions."(1) If he thinks the public welfare requires it, he should even vote against the wishes and instructions of his constituents.(2)

This system of virtual representation was considered purely ideal.(3) It is a legal fiction, says a British pamphleteer, one of those "nicer Principia of the laws of society which it is utterly impracticable to see literally and minutely adhere to in the mechanism and administration of great and populous governments."(4) The colonists admitted the legality of this principle as far as Great Britain was concerned.(5)

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(1) Grenville, Regulations Etc., pp. 108-9; Annual Register, 1766, pp. 201-2.
(2) Tucker, Letters Etc., 1766, pp. 19-20.
(3) Mansfield in Cobbett, Parliamentary History XVI, pp. 173-3.
(4) A Letter to a M. P., 1765, pp. 18, 20-21.
(5) See p. 18.

On this principle of virtual representation, the British accepted the American doctrine of the inseparability of taxation and representation. "The first great maxim of this and every free government", says Lyttleton, "is, that 'no subject is bound by any law to which he is not actually or virtually consenting'. If the colonies are subject to Great Britain, they are represented and consent to all statutes."(1)

At first many of the royal governors and agents, whom the mother-country had sent to the colonies, attempted to solve the problem of representation by proposing that America be permitted to send a number of representatives to Parliament. Pownall persistently advocated this plan.(2) Bernard favored admitting an American delegation, at least long enough to remodel their governments.(3) Knox presented such a plan to the Bute ministry, and tells us that his scheme met the approval of Grenville, who did not propose it to the Commons, because he knew they would reject it.(4) This idea also met with favor from the great English economist, Adam Smith.(5) Some pamphleteers, like Dean Tucker, opposed it on principle;(6) others, like Saome

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(1) Cobbett, Parliamentary History XVI., pp. 166-7.
(2) Pownall, Administration Etc.
(3) Bernard, Select Letters, pp. 33-34; 38-41.
(4) Knox, Extra-Official Papers, II. pp. 30-31.
(5) Adam Smith, Wealth of Nations.
(6) Letters Etc., 1766, pp. 14-18; The Constitutional Right Etc., 1766.

Jenyns, ridiculed it as impracticable.(1) It seems probable that, had the Americans desired representation in Parliament, it might have been extended to them, as it had been to the counties palatine of Lancaster, Chester and Durham; but the colonists did not desire it. This idea came to be repudiated or abandoned even by the American Tories. Daniel Leonard asserted that nature, and not Parliament, had withheld representation;(2) and the plan presented to the First Continental Congress by Joseph Galloway provided for an American Parliament.

The British soon abandoned all schemes of an American representation in Parliament and settled down to the theory that the colonists were already represented. The principle of virtual representation in the Commons was thought to extend to every British subject wherever he might be. The colonists, they say, are as much represented in Parliament as Manchester or Birmingham or nine-tenths of the people of England. A British colony falls under "the natural system of representation subsisting in the time of its first settlement".(3) Every American is eligible to vote in England under the same conditions as an Englishman.

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(1) Jenyns, Objections Etc.
(2) Massachusettensis, p. 172.
(3) The Constitutional Rights Etc., 1766, p. 12. On this point, see also Howard, in Hart, Contemporaries, pp. 395-6; Jenyns, Objections Etc. pp. 8-9; Grenville, Regulations Etc. pp. 107-9; Canning, Letters Etc. pp. 9-10.

It was by free choice that the colonists got so far from England that they could not attend elections. They should not urge this as a reason for changing the political system of England.(1)

In 1766 Richard Bland, on behalf of the colonies, met the virtual representation doctrine with a theory of virtual consent, which admitted the constitutionality, in Great Britain, of the taxing laws of Parliament, but pronounced them inoperative in the colonies. Two years later, Knox attempted to show that this principle of virtual consent to acts of Parliament applied to all British subjects within the Empire. He quoted Hooker and Locke to show that every man gives tacit consent to a government when he continues to live under it. "Upon this principle, every subject of Great Britain, when he is taxed by parliament, is taxed by his own consent, for he is then taxed by the consent of those whom the society has empowered to act for the whole . . . <u>This is the British Constitution</u>."(2) If America will not accept this system of representation as it is, she refuses to accept the British constitution under which she claims her rights.

It was on this controversy concerning virtual consent, that the first clear and indelible distinction was drawn between.

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(1) Tucker, A Letter Etc., 1766, p. 18.
(2) Knox, Controversy Etc., pp. 69-70.

the consent of

the position of Englishmen and Americans with regard to the extent of Parliamentary authority. Hitherto, the American objections to the British system of representation were equally applicable to the unrepresented English. Now the colonists began to recognise the constitutional right of Parliament to tax the unrepresented English, but began to place themselves in a different category. The virtual consent doctrine assailed the British constitution itself, for it rested, not as virtual representation did, on a principle of the British constitution, but on the law of nature.

4. During the later portion of the controversy, the colonists abandoned their constitutional grounds and based their claims to exemption from Parliamentary taxation on their natural rights as men. This was a revolutionary argument, and, if accepted, could not fail to lead to a state of practical independence. The British and their adherents in the colonies had little to say about natural rights except to deny that they could grant any exemptions from the authority of parliament. They answered the arguments of the Americans, not by affirming or denying the validity of the laws of nature on which those arguments were based, but by attempting to show that those laws had not been violated, and to keep the discussion on constitutional grounds. The right of parliament to tax the colonies is a constitutional question, said Mansfield, to which the laws of nature are not applicable.(1)

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(1) Cobbett, Parliamentary History XVI. p. 176; Annual Register for 1766.

[illegible]

Altho the natural rights philosphy was generally accepted and was used by English statesmen and lawyers when it suited their purposes, yet it does not appear that the English controversialists had any definite ideas about a pregovernmental state of nature with its condition of equality and natural, inalienable rights. Such a condition was considered purely ideal.(1) Men were never known to live in such a state "except for a few minutes, like fishes out of the water, in great agonies, terror and convulsions."(2)

The compact idea of the origin of government found little expression among the British writers. Lyttleton thought government, or supreme power, was established by compact; but, being once established, the people were bound to obey the constitutional authority.(3) Some British writers even denied the idea of an original compact.(4)

The doctrine that the colony charters were compacts between King and colonists, was answered by Hutchinson, in his dispute with the Massachusetts Assembly in 1773. The charters are grants, he said, and not compacts. The experience of Massachusetts, he asserts, put the status of the charters beyond dispute. The old charter of that colony was revoked, and the King, acting under his prerogative granted a new charter, which also is subject to

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(1) The Constitutional Rights Etc., 1766, pp. 37-41.
(2) Ramsay, Thoughts Etc. pp. 8-9.
(3) Cobbett, Parliamentary History XVI. p. 166.
(4) Ramsay, Thoughts Etc., p. 10.

annullment by Parliament or by judicial process.[1]

Whether or not government originated in compact, the British were willing to concede that it rests on consent. Lyttleton, as has been noted, stated as a foundation principle of all free government that "no subject is bound by any law to which he is not actually or virtually consenting."[2] The English thought this consent could be virtual, or tacit, and quoted the words of Locke as authority for their contention.

But whatever the British may have thought of the theory of a pregovernmental state of nature and of a social compact as the origin of government, they were a unit in denying that the laws of nature could exempt any part of the Empire from the authority of Parliament. Locke's crude, undigested general principles concerning the natural rights of man cannot be literally applied to men in a state of government, said Tucker.[3] The laws of nature, said Canning, are applicable only to the state of nature; men under government and society must obey the supreme power of the state until it modifies the evils of which they complain. The natural rights of man cannot exempt from the powers of government, because all governments exist at the expense of natural rights; hence, this objection must be considered as against the <u>state</u> of government

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(1) Hutchinson, History of Mass. Bay III, pp. 358-9; Mass. State Papers, pp. 322-3.
(2) Cobbett, Parliamentary History XVI. p. 166.
(3) Tucker, Letter to Burke Etc., 1775, pp. 11-12.

rather than against any particular form.(1) The laws of nature, said Galloway, "are founded on reason and immutable justice which requires a rigid performance of every lawful contract;- to suppose, therefore, that a right can thence be derived to violate the most solemn and sacred of all covenants; those upon which the existence of societies and the welfare of millions depend, is in the highest degree absurd."(2)

The natural right of revolution, so far as such a right exists, rests with the entire state and not with a portion of it. The collective body of the people of the whole British Empire may have the right to change the form of government; but the right of local revolution is destructive of all government.(3)

The Declaration of Independence was the climax in the development of American opinion concerning their political relations with the mother-country - the imperial problem which England had tried to solve in 1764. Starting with a confused idea of these relations, in which we find some admissions of a right of Parliament to tax them, they successively denied the right of Parliament to lay duties for revenue, the right to legislate without their consent, and, finally, asserted complete independence, not only of Parliament but of the whole British

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(1) Canning, Letters Etc. pp. 33-34; Hutchinson, in Mass. State Papers, pp. 337-340.
(2) Galloway, A Candid Examination Etc. p. 29.
(3) Massachusettensis, p. 225.

government. Starting with a triple basis for their claims to exemption - charter grants, the principles of the British constitution and a semi-constitutional view of the law of nature, they had finally staked their cause on an unadulterated theory of natural right. The British consistently defended the sovereign constitutional right of Parliament to legislate for the colonies, "in all cases whatsoever," even after consistency had long ceased to be a virtue. The insistence of Parliament that it had a right to tax America because the principle of the corrupt and outgrown system of English constitutional representation was conceived to extend over the whole British Empire, led to the revolt of the colonies and the division of the English people.

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